

INVESTOR AND CAPITAL MARKETS FEE RELIEF ACT

MAY 1, 2001.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1088]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1088) to amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Investor and Capital Markets Fee Relief Act”.

SEC. 2. IMMEDIATE TRANSACTION FEE REDUCTIONS.

Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) by striking “ $\frac{1}{300}$ of one percent” each place it appears in subsections (b) and (d) and inserting “\$12 per \$1,000,000”;

(2) in the first sentence of subsection (b), by striking “, except that” and all that follows through the end of such sentence and inserting a period;

(3) in paragraph (1) of subsection (d), by striking “, except that” and all that follows through the end of such paragraph and inserting a period;

(4) in subsection (e), by striking “\$0.02” and inserting “\$0.0072”; and

(5) by adding at the end the following new subsection:

“(i) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this section shall be applied pro rata to amounts and balances equal to less than \$1,000,000.”.

SEC. 3. REVISION OF SECURITIES TRANSACTION FEE PROVISIONS; ADDITIONAL FEE REDUCTIONS.

(a) POOLING AND ALLOCATION OF COLLECTIONS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended—

(1) in subsection (b)—

(A) by striking “Every” and inserting “Subject to subsection (j), each”; and

(B) by striking the last sentence;

(2) by striking subsection (c);

(3) in subsection (d)—

(A) by striking paragraphs (2) and (3);

(B) by striking the following:

“(d) OFF-EXCHANGE TRADES OF LAST-SALE-REPORTED SECURITIES.—

“(1) COVERED TRANSACTIONS.—Each national securities”

and inserting the following:

“(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED AND LAST-SALE-REPORTED SECURITIES.—Subject to subsection (j), each national securities”;

(C) by inserting “registered on a national securities exchange or” after “security futures products”;

(D) by striking “, excluding any sales for which a fee is paid under subsection (c)”;

(4) in subsection (e), by striking “except that for fiscal year 2007” and all that follows through the end of such subsection and inserting the following: “except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction.”;

(5) in subsection (f), by striking “DATES FOR PAYMENT OF FEES.—The fees required” and inserting “DATES FOR PAYMENTS.—The fees and assessments required”;

(6) by redesignating subsections (e) through (i) (as added by section 2(5)) as subsections (d) through (h), respectively;

(7) by adding at the end the following new subsection:

“(i) DEPOSIT OF FEES.—

“(1) OFFSETTING COLLECTIONS.—Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year—

“(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

“(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

“(2) GENERAL REVENUES PROHIBITED.—No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.”.

(b) ADDITIONAL REDUCTIONS OF FEES.—

(1) AMENDMENT.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is further amended by adding after subsection (i) (as added by subsection (a)(7)) the following new subsections:

“(j) RECAPTURE OF PROJECTION WINDFALLS FOR FURTHER RATE REDUCTIONS.—

“(1) ANNUAL ADJUSTMENT.—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when

applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d)) that are equal to the target offsetting collection amount for such fiscal year.

“(2) FINAL RATE ADJUSTMENT.—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for all of such fiscal years to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this section in fiscal year 2012 (including assessments collected under subsection (d)) equal to the target offsetting collection amount for fiscal year 2011.

“(3) REVIEW AND EFFECTIVE DATE.—An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. Subject to subsections (i)(1)(B) and (k)—

“(A) an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

“(i) the first day of the fiscal year to which such rate applies; or

“(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

“(B) an adjusted rate prescribed under paragraph (2) shall take effect on the later of—

“(i) the first day of fiscal year 2012; or

“(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

“(k) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) at the rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

“(l) DEFINITIONS.—For purposes of this section:

“(1) TARGET OFFSETTING COLLECTION AMOUNT.—The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

“Fiscal year:	Target offsetting collection amount
2002	\$585,720,000
2003	\$679,320,000
2004	\$822,240,000
2005	\$976,320,000
2006	\$1,148,040,000
2007	\$880,880,000
2008	\$892,080,000
2009	\$1,023,120,000
2010	\$1,161,440,000
2011	\$1,321,040,000

“(2) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, and security futures products) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.”

(2) CONFORMING AMENDMENT.—Section 31(g) of such Act (as redesignated by subsection (a)(6) of this section) is amended by inserting before the period at the end the following: “not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based”.

SEC. 4. REDUCTION OF REGISTRATION FEES.

Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended by striking paragraphs (2) through (5) and inserting the following:

“(2) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to \$125 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (5) or (6).

“(3) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

“(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

“(B) except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

“(4) GENERAL REVENUES PROHIBITED.—No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

“(5) ANNUAL ADJUSTMENT.—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (2) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target offsetting collection amount for such fiscal year.

“(6) FINAL RATE ADJUSTMENT.—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (2) for all of such fiscal years to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this subsection in fiscal year 2012 equal to the target offsetting collection amount for fiscal year 2011.

“(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

“(8) REVIEW AND EFFECTIVE DATE.—An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (3)(B) and (9)—

“(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

“(i) the first day of the fiscal year to which such rate applies; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

“(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

“(i) the first day of fiscal year 2012; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

“(9) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

“(10) PUBLICATION.—The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) for each fiscal year not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

“(11) DEFINITIONS.—For purposes of this subsection:

“(A) TARGET OFFSETTING COLLECTION AMOUNT.—The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

“Fiscal year:	Target offsetting collection amount
2002	\$512,500,000
2003	\$589,380,000
2004	\$650,385,000
2005	\$790,075,000
2006	\$949,050,000
2007	\$214,200,000
2008	\$233,700,000
2009	\$284,115,000
2010	\$333,840,000
2011	\$394,110,000

“(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES.—The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required

for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.”.

SEC. 5. FEES FOR STOCK REPURCHASE STATEMENTS.

Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(1) in paragraph (3), by striking “a fee of $\frac{1}{50}$ of 1 per centum of the value of securities proposed to be purchased” and inserting “a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of the value of securities proposed to be purchased”;

(2) by inserting after paragraph (3) the following new paragraphs:

“(4) **OFFSETTING COLLECTIONS.**—Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

“(5) **ANNUAL ADJUSTMENT.**—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

“(6) **FINAL RATE ADJUSTMENT.**—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

“(7) **PRO RATA APPLICATION.**—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

“(8) **REVIEW AND EFFECTIVE DATE.**—An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)—

“(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

“(i) the first day of the fiscal year to which such rate applies; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

“(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

“(i) the first day of fiscal year 2012; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

“(9) **LAPSE OF APPROPRIATION.**—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

“(10) **PUBLICATION.**—The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.”.

SEC. 6. FEES FOR PROXY SOLICITATIONS AND STATEMENTS IN CORPORATE CONTROL TRANSACTIONS.

Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)(3)) is amended—

(1) in paragraphs (1) and (3), by striking “a fee of $\frac{1}{50}$ of 1 per centum of” each place it appears and inserting “a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of”;

(2) by redesignating paragraph (4) as paragraph (11); and

(3) by inserting after paragraph (3) the following new paragraphs:

“(4) **OFFSETTING COLLECTIONS.**—Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

“(5) **ANNUAL ADJUSTMENT.**—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates required by paragraphs

(1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

“(6) FINAL RATE ADJUSTMENT.—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

“(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

“(8) REVIEW AND EFFECTIVE DATE.—An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)—

“(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

“(i) the first day of the fiscal year to which such rate applies; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

“(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

“(i) the first day of fiscal year 2012; or

“(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

“(9) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

“(10) PUBLICATION.—The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.”

SEC. 7. TRUST INDENTURE ACT FEE.

Section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77ggg(b)) is amended by striking “Commission, but, in the case” and all that follows and inserting “Commission.”

SEC. 8. PAY PARITY PROVISIONS.

(a) SECURITIES AND EXCHANGE COMMISSION EMPLOYEES.—Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended—

(1) by striking paragraphs (1) and (2) and by inserting the following:

“(1) APPOINTMENT, COMPENSATION, AND BENEFITS.—

“(A) IN GENERAL.—The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out its functions under this Act.

“(B) RATES OF PAY.—Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

“(C) ADDITIONAL COMPENSATION AND BENEFITS.—The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any agency referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

“(2) INFORMATION; COMPARABILITY.—In establishing and adjusting schedules of compensation and additional benefits for employees of the Commission, which are to be determined solely by the Commission under this subsection, the Commission—

“(A) shall consult with and inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

“(B) shall inform the Congress of such compensation and benefits; and

“(C) shall seek to maintain comparability with such agencies regarding compensation and benefits.”

(b) TECHNICAL AMENDMENTS.—

(1) Section 3132(a)(1) of title 5, United States Code, is amended—

(A) in subparagraph (C), by striking “or” after the semicolon;

(B) in subparagraph (D), by inserting “or” after the semicolon; and

- (C) by adding at the end of the following:
“(E) the Securities and Exchange Commission.”
- (2) Section 5373(a) of title 5, United States Code, is amended—
(A) in paragraph (2), by striking “or” after the semicolon;
(B) in paragraph (3), by striking the period and inserting “; or”; and
(C) by adding at the end of the following:
“(4) section 4(b) of the Securities Exchange Act of 1934.”

SEC. 9. STUDY OF THE EFFECT OF FEE REDUCTIONS.

(a) **STUDY.**—The Office of Economic Analysis of the Securities and Exchange Commission (hereinafter referred to as the “Office”) shall conduct a study of the extent to which the benefits of reductions in fees effected as a result of this Act are passed on to investors.

(b) **FACTORS FOR CONSIDERATION.**—In conducting the study under subsection (a), the Office shall—

(1) consider all of the various elements of the securities industry directly and indirectly benefitting from the fee reductions, including purchasers and sellers of securities, members of national securities exchanges, issuers, broker-dealers, underwriters, participants in investment companies, retirement programs, and others;

(2) evaluate the impact on different types of investors, such as individual equity holders, individual investment company shareholders, businesses, and other types of investors;

(3) include in the interpretation of the term “investor” shareholders of entities subject to the fee reductions; and

(4) consider the economic benefits to investors flowing from the fee reductions to include such factors as market efficiency, expansion of investment opportunities, and enhanced liquidity and capital formation.

(c) **REPORT TO CONGRESS.**—Not later than 2 years after the date of enactment of this Act, the Securities and Exchange Commission shall submit to the Congress the report prepared by the Office on the results of the study conducted under subsection (a).

SEC. 10. EFFECTIVE DATES.

(a) **IN GENERAL.**—Except as provided in subsections (b), (c), and (d), the amendments made by this Act shall take effect on October 1, 2001.

(b) **IMMEDIATE TRANSACTION FEE REDUCTIONS.**—The amendments made by section 2 shall take effect on the later of—

(1) the first day of fiscal year 2002; or

(2) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted.

(c) **PAY PARITY.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by section 8 shall take effect on the date of enactment of this Act.

(2) **EXCEPTION.**—The amendments made by section 8(b)(1) shall take effect as of such date as the Securities and Exchange Commission shall (by order published in the Federal Register) prescribe, but in no event later than 1 year after the date of enactment of this Act.

(d) **ADDITIONAL EXCEPTIONS.**—The authorities provided by section 6(b)(9) of the Securities Act of 1933 and sections 13(e)(9), 14(g)(9) and 31(k) of the Securities Exchange Act of 1934, as so designated by this Act, shall not apply until October 1, 2002.

PURPOSE AND SUMMARY

The purpose of H.R. 1088, the Investor and Capital Markets Fee Relief Act, is to provide cost savings to investors and market participants. The legislation reduces or eliminates all of the “user” fees imposed by the Securities and Exchange Commission (SEC), including transaction fees, registration fees, merger and tender offer fees, single stock future transaction assessments, and Trust Indenture Act fees.

The legislation reduces transaction fees by over 60 percent for the years 2002 to 2006. From 2007 to 2011, those fees are reduced by over 40 percent. The fees are reduced by a smaller percentage in the later years because under current law, the fees will be lowered significantly in 2007. In the aggregate over fiscal years 2002

to 2011, the bill reduces registration fees by 28 percent. In the aggregate over fiscal years 2002 to 2011, the legislation reduces merger and tender offer fees by 50 percent. H.R. 1088 reduces the assessment on security futures transactions by 64 percent in 2002, and an additional 44 percent in 2007.

The legislation directs the SEC, in consultation with the Congressional Budget Office and the Office of Management and Budget, to set the new reduced fee rates annually, based on estimates reached pursuant to the methodology used by the CBO.

H.R. 1088 includes a provision granting SEC employees pay parity with Federal banking regulators. This provision is designed to help the Commission attract and retain first-rate attorneys, accountants, and economists for its important mission of protecting investors, preserving the integrity of the capital markets, and promoting capital formation. This provision would require a net funding increase of approximately \$70.9 million in fiscal 2002, with yearly adjustments for inflation thereafter.

H.R. 1088 changes the budgetary treatment of fee collections. Under current law, fees are deposited and collected as either general revenue of the Treasury or “offsetting collections,” depending on the fee. The legislation reduces overall SEC fee collections by eliminating the general revenue portion of fee collections (\$14.0 billion or approximately 50 percent of projected SEC fee collections over the next ten years). The bill is designed to keep offsetting collections, which are the monies used by the SEC’s appropriators to fund the agency, at the levels projected under current law over the next ten years. As such, H.R. 1088 provides a long-term stable funding source for the appropriators to fund the Commission. The SEC has enthusiastically endorsed H.R. 1088.

BACKGROUND AND NEED FOR LEGISLATION

Federal securities laws authorize the Securities and Exchange Commission to impose “user” fees on investors and market participants. The fees include: transaction fees, paid when securities are sold, authorized under section 31 of Securities Exchange Act of 1934; registration fees, paid by corporations and investment companies when they register securities for sale, authorized under section 6(b) of the Securities Act of 1933; fees on mergers and tender offers, which are bids to acquire publicly traded corporations through purchase of their stock, authorized by sections 13(e) and 14(g) of the Securities Exchange Act of 1934; and assessments paid by investors on the sale of single stock futures, a hybrid financial instrument made legal by enactment of the Commodity Futures Modernization Act of 2000, authorized by section 31 of Securities Exchange Act of 1934.

Congress created this fee structure in the 1930s, so that the regulated community would pay for the cost of its regulation, i.e., the fees paid by market participants would fund the SEC. Congress intended the fees to provide the Commission with sufficient funding for its important mission of promoting capital formation and protecting investors. Congress neither expected nor intended the fees to evolve from a cost-recovery mechanism into a general tax deposited into the U.S. Treasury, with the proceeds used to fund other Federal agencies and programs.

Since 1983, fee revenue has exceeded the budget of the SEC by a significant and growing margin, due largely to a rising stock market and unprecedented trading volume. In fiscal year 2000, overall SEC fee collections were \$2.27 billion—more than six times the Commission’s \$377 million budget.

According to the Congressional Budget Office (CBO), fee revenue will continue on an upward path. The latest CBO baseline estimates indicate that over \$4 billion in fees will be collected by fiscal year 2006—over ten times the Commission’s most recent budget.

The following chart illustrates the statutory authority, rate, and amount of the fees that the SEC collected for fiscal year 2000:

SEC fee	Statutory authority	Rate	Actual collections, FY 2000
Transaction	§ 31 of the Securities Exchange Act of 1934.	1/300th of 1%	\$1.091 billion collected (\$502 million to general revenues, \$589 million to offsetting collections).
Registration	§ 6(b) of the Securities Act of 1933 ...	1/50th of 1%	\$1.102 billion collected (\$829 million to general revenues, \$279 million to offsetting collections).
Mergers and Tender Offers.	§§ 13(e)(3) and 14(g) of the Securities Exchange Act of 1934.	1/50th of 1%	\$78 million collected (all to general revenues).
Single Stock Futures.	§ 31 of the Securities Exchange Act of 1934.	\$0.02 for each round turn transaction.	N/A.

The fees affect the bottom line of individual investors. The 80 million Americans who own stocks directly or indirectly—such as through a mutual fund, pension fund, or 401(k)—are subject to the transaction fee. Similarly, registration, mergers, and tender offer fees all add costs to capital formation, impeding job creation and economic growth, and are ultimately paid by investors.

For more than a decade, Congress has sought to address concerns about the SEC’s excess fee collections. While there has been consensus that the current structure is indefensible, no legislative proposal has succeeded in eliminating the excess fees.

By 1995, fee revenue was more than twice the amount of the SEC budget. Many in Congress argued that the fees were becoming an unintended tax on investors and capital formation.

Congress addressed these concerns in the National Securities Markets Improvement Act of 1996 (NSMIA) (Public Law 104–290). Among other provisions, NSMIA lowered registration fees, dramatically reduced transaction fees beginning in FY 2007, and extended the transaction fee to NASDAQ stocks to provide competitive parity between the exchanges and the NASDAQ market.

Despite the progress represented by the 1996 reforms, fees continued to spiral upward due to increasing market volume and a sustained bull market. In the 105th Congress, two competing bills reducing transaction fees were introduced in the House to bring fee collections in line with their original intent of recouping the government’s costs of supervising the markets. One bill reduced the rate (H.R. 4269), and the other placed a cap on the fees (H.R. 4213). No committee action was taken on either bill.

In the 106th Congress, bills incorporating the two different approaches to reducing transaction fees were introduced again. In the House, the Committee on Commerce reported legislation (H.R. 2441; H. Rpt. 106–1034) reducing the rate from 1/300th of 1 percent to 1/500th of 1 percent. The Senate Banking Committee also

reported a bill (S. 2107; S. Rpt. 106–360) reducing the transaction fee rate. Neither bill received further consideration.

In the 107th Congress, the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing entitled “Saving Investors Money: Reducing Excessive SEC fees” on March 7, 2001. The Subcommittee received testimony from the Securities and Exchange Commission, the Senate sponsors of S. 143 (a similar measure that passed the Senate on a voice vote on March 23, 2001), and various market participants, including one of the country’s largest pension fund managers, indicating that the “user” fees imposed by the SEC are producing revenues far in excess of the Commission’s operating costs. The witnesses testified that the excess collections are inconsistent with the explicit congressional intent of the fees, which is to recover the costs to the government for supervising the capital markets.

In the most recent fiscal year, the fees generated revenues exceeding the SEC budget by over 600 percent. Over the next ten years, it is estimated that total fee revenue will be approximately \$25 billion. The witnesses observed that these fees are paid by investors and market participants, and are an unjustified and excessive tax on retirement savings and capital formation. The witnesses unanimously urged the Committee to consider legislation that would reduce these excess fees.

The witnesses also testified in favor of providing the SEC with the ability to pay their employees at a level commensurate with that paid to other financial regulators, such as the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System. The SEC observed that it is extremely difficult to retain top professional staff at current pay levels, and noted that, after passage of the Gramm-Leach-Bliley Act, SEC employees are often performing identical functions as their counterparts in the banking agencies, yet they receive considerably less compensation.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 974, the Small Business Interest Checking Act of 2001 on March 13, 2001. The Subcommittee received testimony from: The Honorable Laurence H. Meyer, Member, Board of Governors of the Federal Reserve System; Mr. Donald V. Hammond, Acting Under Secretary for Domestic Finance, Department of the Treasury; Mr. James E. Smith, Chairman and Chief Executive Officer, Citizens Union State Bank & Trust of Clinton, Missouri, President-Elect of the American Bankers Association; Mr. David A. Bochnowski, Chairman and Chief Executive Officer, Peoples Bank of Munster, Indiana, Chairman of America’s Community Bankers; Mr. Thomas P. Jennings, Senior Vice President and General Counsel, First Virginia Banks, Inc., on behalf of the Financial Services Roundtable; and Mr. Robert Gullede, President and Chief Executive Officer, Citizens Bank, Inc. of Robertsedale, Alabama, Chairman of the Independent Community Bankers of America.

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises met in open session on March 21, 2001 and approved H.R. 1088 for full Committee consideration by a voice vote, without amendment, a quorum being present.

On March 28, 2001, the Committee met in open session and ordered H.R. 1088 reported, as amended, to the House with a favorable recommendation by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill, with an amendment, to the House with a favorable recommendation was agreed to by a voice vote.

The following amendments were considered—

An amendment in the nature of a substitute by Mr. Fossella, No. 1, making technical changes to the bill, was agreed to by a voice vote, as amended.

An amendment to the amendment in the nature of a substitute by Mr. Frank, No. 1a, striking the fee reduction provisions, was not agreed to by a record vote of 12 yeas and 46 nays (Record vote no. 3).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Frank	Mr. Leach
Mr. Kanjorski	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. Baker
Mr. Gutierrez	Mr. Bachus
Ms. Velazquez	Mr. Castle
Mr. Watt of North Carolina	Mr. Royce
Ms. Lee	Mr. Lucas of Oklahoma
Mr. Mascara	Mr. Ney
Ms. Schakowsky	Mr. Barr of Georgia
Mrs. Jones of Ohio	Mrs. Kelly
	Mr. Paul
	Mr. Weldon of Florida
	Mr. Ryun of Kansas
	Mr. Riley
	Mr. Jones of North Carolina
	Mr. Ose
	Mrs. Biggert
	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Fossella
	Mr. Gary Miller of California
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson

Mr. Rogers of Michigan
 Mr. Tiberi
 Mrs. Maloney of New York
 Mr. Ackerman
 Mr. Bentsen
 Ms. Hooley of Oregon
 Mr. Sherman
 Mr. Sandlin
 Mr. Inslee
 Mr. Gonzalez
 Mr. Ford
 Mr. Hinojosa
 Mr. Lucas of Kentucky
 Mr. Shows
 Mr. Crowley
 Mr. Israel
 Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. Kanjorski, No. 1b, addressing the recovery of additional costs for governmental activities beyond those incurred by the Securities and Exchange Commission, was not agreed to by a record vote of 14 yeas and 37 nays (Record vote no. 4).

YEAS	NAYS
Mr. LaFalce	Mr. Oxley
Mr. Kanjorski	Mrs. Roukema
Ms. Waters	Mr. Bereuter
Mr. Sanders	Mr. Baker
Mr. Gutierrez	Mr. Bachus
Mr. Watt of North Carolina	Mr. Castle
Mr. Bentsen	Mr. King
Ms. Hooley of Oregon	Mr. Royce
Mr. Sherman	Mr. Barr of Georgia
Mr. Meeks of New York	Mrs. Kelly
Ms. Lee	Mr. Cox
Mr. Mascara	Mr. Weldon of Florida
Ms. Schakowsky	Mr. Ryun of Kansas
Mrs. Jones of Ohio	Mr. Riley
	Mr. Jones of North Carolina
	Mrs. Biggert
	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Shadegg
	Mr. Fossella
	Mr. Cantor
	Mr. Grucci
	Ms. Hart
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mrs. Maloney of New York
	Mr. Maloney of Connecticut
	Mr. Inslee

Mr. Moore
Mr. Gonzalez
Mr. Lucas of Kentucky
Mr. Shows
Mr. Israel
Mr. Ross

An amendment to the amendment in the nature of a substitute by Mr. Bentsen, No. 1c, providing for a study of the effect of the fee reductions, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, No. 1d, raising the fees in the underlying bill by diminishing the reduction in fees in the underlying bill, was not agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation does not authorize funding, and therefore no statement is required.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in changes to budget authority, entitlement authority, or tax expenditures or revenues consistent with the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 3, 2001.

Hon. MICHAEL G. OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1088, the Investor and Capital Markets Fee Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1088—Investor and Capital Markets Fee Relief Act

Summary: H.R. 1088 would adjust the fees and assessments that the Securities and Exchange Commission (SEC) is authorized to collect for registrations, mergers, and transactions of securities. Under current law, some of those fees and assessments are recorded in the budget as governmental receipts (revenues), and some are recorded as offsetting collections that are credited against discretionary appropriations for the SEC. The bill would reclassify all SEC fees and assessments as offsetting collections and adjust the fee rates. If implemented, H.R. 1088 would reduce the total amount of SEC fees from an estimated \$2.5 billion in fiscal year 2001 to \$1.3 billion 2003. CBO estimates that enacting H.R. 1088 would reduce governmental receipts by \$1.5 billion in 2002 and by \$8.9 billion over the 2002–2006 period. Because H.R. 1088 would affect governmental receipts, pay-as-you-go procedures would apply. CBO estimates that implementing H.R. 1088 also would cause the SEC’s offsetting collections to increase by about \$126 million in 2002 and \$130 million over the 2002–2006 period, relative to CBO’s current baseline estimates.

The bill would authorize the SEC to increase employees’ compensation and benefits to make them comparable to agencies that regulate banking, such as the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA). CBO estimates that implementing the bill’s compensation-related provisions would cost about \$362 million over the 2001–2006 period, assuming the appropriation of the necessary amounts.

H.R. 1088 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1088 is shown in Table 1. The costs of this legislation fall within budget function 370 (commerce and housing credit).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1088

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION						
CBO Baseline Estimate of Net SEC Spending:						
Estimated Authorization Level ¹	–594	0	0	0	0	0
Estimated Outlays	–620	–156	–54	–62	–86	–97
Proposed Changes:						
Changes in Gross SEC Spending:						
Estimated Authorization Level	16	65	69	71	73	75
Estimated Outlays	14	60	69	71	73	75
Changes in Offsetting Collections:						
Estimated Authorization Level	0	–126	–2	–1	0	–1
Estimated Outlays	0	–126	–2	–1	0	–1

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1088—Continued

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
Changes in Net SEC Spending:						
Estimated Authorization Level	16	–61	67	70	73	74
Estimated Outlays	14	–66	67	70	73	74
Net SEC Spending Under H.R. 1088:						
Estimated Authorization Level ¹	–578	–61	67	70	73	74
Estimated Outlays	–606	–222	13	8	–13	–23
	CHANGES IN REVENUES					
Estimated Revenues	0	–1,494	–1,601	–1,750	–1,919	–2,097

¹ The 2001 level is the estimated net amount appropriated for that year; the gross SEC appropriation for 2001 was \$423 million.

Basis of estimate: CBO estimates that implementing the compensation-related provisions of H.R. 1088 would increase the gross spending of the SEC by \$362 million over the 2001–2006 period, subject to appropriation of the necessary amounts. For purposes of this estimate we assume the bill and supplemental appropriations to implement it will be provided in the next few months. Carrying out the bill's fee-related provisions would increase offsetting collections by about \$126 million in 2002 and \$130 million over the 2002–2006 period, relative to CBO's baseline estimates. Also, we estimate that enacting the bill would reduce revenues by \$1.5 billion in 2002 and by \$8.9 billion over the 2002–2006 period by eliminating those SEC fees and assessments that are currently recorded in the budget as revenues.

Spending subject to appropriation

H.R. 1088 would have two effects on the spending of the SEC that are subject to appropriation. First, the bill would authorize the SEC to increase the compensation it offers to its employees. Also, H.R. 1088 would restructure the fees the agency is authorized to charge as an offset to its discretionary appropriations.

Changes in Gross Spending. Currently, SEC employees fall into two compensation categories: those subject to the pay scales of the civil service system, and those whose salaries have been adjusted to equal the amounts received by similar employees in the securities industry. H.R. 1088 would authorize the SEC to raise the pay of both types of employees to a level commensurate with the compensation offered by federal banking regulatory agencies. Based on information from the SEC and several of the banking-related agencies, CBO estimates that implementing this provision of the bill would cost \$14 million in 2001, \$60 million in 2002, and \$362 million over the 2001–2006 period, assuming appropriation of the necessary amounts.

Changes in Offsetting Collections. H.R. 1088 would restructure all four types of SEC collections: registration fees, merger and tender fees, assessments on the trading of single stock futures, and transaction fees (see Table 2). The bill would reclassify all of these fees as offsetting collections, as of October 1, 2001. Also, the bill would reduce the rates on registration and merger fees effective on October 1, 2001, and on transaction fees and assessments as of 30 days after the enactment of the 2002 appropriation for the SEC. Based on historical information from the securities industry on the number and type of securities registered and traded, CBO esti-

mates that the fee-related provisions of H.R. 1088 would cause the SEC's offsetting collections to rise by \$126 million in 2002 and \$130 million over the 2002–2006 period, relative to CBO's baseline.

Transaction fees. Under current law, the SEC collects 1/300th of a percent of the aggregate dollars traded through national securities exchanges, national securities associations, brokers, and dealers. The fee rate will decline to 1/800th of a percent for 2007 and thereafter. Currently, fees collected from national securities associations are recorded as offsetting collections, while fees from other sources are recorded as revenues.

Under the bill, all transactions fees would be classified as offsetting collections. Furthermore, the bill would reduce the transaction fee rate in 2002 to \$12 per \$1 million of the aggregate dollars traded. For the years 2003 through 2011, the bill would require that the SEC establish a fee rate before a fiscal year begins that would generate transaction fee collections in that fiscal year equal to a target amount. For a given year, the target amount would be equal to a figure specified in the bill, minus the estimated assessments on trades of single stock futures that would be collected by the SEC in that year.

TABLE 2.—SEC FEES UNDER CBO'S BASELINE ESTIMATES AND H.R. 1088

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
SEC Fees Under CBO's January 2001 Baseline:						
Transaction Fees	1,370	1,627	1,887	2,284	2,712	3,189
Registration Fees	1,024	980	953	912	958	999
Merger Fees	84	89	93	97	99	100
Assessments on Single Stock Futures	0	1	1	2	2	2
Total	2,478	2,697	2,934	3,295	3,771	4,290
SEC Fee Collections Under H.R. 1088:						
Transaction Fees	1,370	758	679	822	975	1,147
Registration Fees	1,024	513	589	650	790	949
Merger Fees	84	56	66	72	84	94
Assessments on Single Stock Futures	0	1	1	1	1	1
Total	2,478	1,328	1,335	1,545	1,850	2,191
Proposed Changes:						
Transaction Fees	0	-869	-1,208	-1,462	-1,737	-2,042
Registration Fees	0	-467	-364	-262	-168	-50
Merger Fees	0	-33	-27	-25	-15	-6
Assessments on Single Stock Futures	0	0	0	1	1	1
Total Changes	0	-1,369	-1,599	-1,750	-1,921	-2,099

CBO estimates that implementing H.R. 1088 would yield \$758 million in 2002 from such fees. By comparison, under our current baseline assumptions, CBO estimates \$989 million in offsetting collections from transaction fees in 2002. (Under current law, we also estimate revenues of \$638 million in 2002 from transaction fees.)

Registration fees. Under current law, the SEC collects a fee on the registration of securities. The current registration fee is \$200 per \$1 million of the maximum aggregate price for securities that are proposed to be offered during the 2002–2006 period. After 2006, the fee drops to \$67 per \$1 million of the maximum aggregate price for securities that are proposed to be offered. These fees are re-

recorded as governmental receipts (revenues). Current law also requires, subject to appropriation, that the SEC charge an additional registration fee of \$39 per \$1 million of the maximum aggregate price for securities that are proposed to be offered in 2002. Under current law, this added registration fee gradually declines after 2002, until it ends at the end of 2005. These additional fees are recorded as offsetting collections.

H.R. 1088 would eliminate all registration fees that are recorded as governmental receipts and would set fees that are recorded as offsetting collections at \$125 per \$1 million of the maximum aggregate price for securities that are proposed to be offered in 2002. For the years 2003–2011, the bill would require that the SEC establish a fee rate before a fiscal year begins that would generate registration fee collections in that fiscal year equal to a target amount. CBO estimates that under the bill the SEC would collect \$513 million in registration fees in 2002, subject to appropriation. By comparison, we estimate that under the CBO baseline the SEC would collect a total of \$980 million in registration fees in 2002 (\$820 million that would be recorded as revenues and \$160 million in offsetting collections).

Merger and tender fees. Under current law, the SEC charges a merger fee equal to \$200 per \$1 million of the value of securities proposed to be purchased as part of a merger. These fees are also currently recorded as revenues. H.R. 1088 would eliminate the current merger fee and establish a new one that would be recorded as an offsetting collection at a rate equal to the rate for registration fees under the bill. CBO estimates that under H.R. 1088 the SEC would collect about \$56 million in merger fees in 2002, subject to appropriation. By comparison, under the CBO baseline, we estimate that merger fees would total \$89 million in 2002.

Assessments on transactions of single stock futures. The Commodity Futures Modernization Act of 2000 allowed individuals to begin trading futures on individual stocks. The act also established an assessment on these trades equal to 2 cents per transaction through 2006 and 0.75 cents per transaction for 2007 and thereafter. These assessments are currently recorded as governmental receipts (i.e., revenues). Under CBO's baseline, we project that these assessments will total \$1 million in 2002.

H.R. 1088 would reclassify those assessments that are recorded as receipts and would treat them as offsetting collections subject to annual appropriation acts. The bill also would change the rates on these assessments to \$0.0072 per transaction during the 2002–2006 period and \$0.0042 per transaction in 2007 and thereafter. CBO estimates that, under H.R. 1088, the SEC would collect \$1 million in assessments on trading of single stock futures in 2002 and \$5 million over the 2002–2006 period.

Summary. CBO's January 2001 baseline includes estimated offsetting collections for the SEC totaling about \$1.15 billion in 2002, rising to \$2.2 billion in 2006. We estimate the change in the fee rates paid for registrations, mergers, transactions, and trades of single stock futures and the reclassification of all SEC fees as offsetting collections would increase the offsetting collections received by the SEC by \$126 million in 2002 and \$130 million during the 2002–2006 period (relative to our baseline projections).

Revenues

H.R. 1088 would eliminate all fees and assessments on registrations, mergers, and transactions that are currently recorded as revenues. CBO estimates that H.R. 1088 would reduce revenues by \$8.9 billion over the 2002–2006 period, and by \$14.0 billion over the 2002–2011 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The changes in governmental receipts that are subject to pay-as-you-go procedures are shown in Table 3. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 3.—ESTIMATED IMPACT OF H.R. 1088 ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	1008	2009	2010	2011
Changes in outlays	Not applicable										
Changes in receipts	0	-1,494	-1,601	-1,750	-1,919	-2,097	-921	-933	-1,009	-1,087	-1,176

Intergovernmental and private-sector impact: H.R. 1088 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On March 14, 2001, CBO transmitted a cost estimate for S. 143, the Competitive Market Supervision Act of 2001, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 2, 2001. S. 143 contains the provisions in H.R. 1088 that would authorize the SEC to raise the compensation of its employees to levels commensurate with other financial regulatory agencies. S. 143 would also reclassify all SEC fees as offsetting collections and alter the fee rates. However, that bill would change SEC fees in different ways than H.R. 1088, and S. 143 would require that total offsetting collections fall between a minimum amount and a maximum amount for each year. CBO estimated that S. 143 would reduce revenues by \$8.9 billion over the 2001–2006 period and would have no effect on offsetting collections, relative to the CBO baseline.

Because H.R. 1088 and S. 143 would affect state, local, and tribal governments in the same way, the intergovernmental mandate statements for both bills are identical.

S. 143 contains a private-sector mandate with costs below the annual threshold established by UMRA (\$113 million in 2001, adjusted for inflation). Provisions in the Senate bill would require each national securities exchange and the national securities association to file monthly with the SEC an estimate of fees and assessments that they are required to pay. H.R. 1088 does not include those provisions and the bill does not contain any private-sector mandates as defined by UMRA.

Estimate prepared by: Federal Costs: Ken Johnson and Erin Whitaker. Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins. Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States); Article 1, section 8, clause 3 (relating to the power to regulate interstate commerce); Article 1, section 8, clause 5 (relating to the power to coin money and regulate the value thereof); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, April 2, 2001.

Hon. MICHAEL G. OXLEY,
*Chairman, House Committee on Financial Services, Rayburn House
Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: On March 28, 2001, the Committee on Financial Services ordered reported H.R. 1088, the Investor and Capital Markets Fee Relief Act. As you are aware, section 2 of the bill affects the Agriculture Committee's jurisdiction with regard to transaction fees on security futures products.

Because of your willingness to consult with the Committee on Agriculture regarding this matter, your continuing support for our requested changes, and the need to move this legislation expeditiously, I will waive consideration of the bill by the Agriculture Committee. By agreeing to waive its consideration of the bill, the Agriculture Committee does not waive its jurisdiction over H.R. 1088. In addition, the Committee on Agriculture reserves its authority to seek conferees on any provisions of the bill that are within our jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support

any request by our Committee for conferees on H.R. 1088 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your cooperation in this matter.

Sincerely,

LARRY COMBEST,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, April 2, 2001.

Hon. LARRY COMBEST,
*Chairman, House Committee on Agriculture, Longworth House Of-
fice Building, Washington, DC.*

DEAR CHAIRMAN COMBEST: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1088, the Investor and Capital Markets Fee Relief Act.

I acknowledge your committee's jurisdictional interest in the changes to the fee structure for security futures products contained in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Agriculture with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, April 2, 2001.

Hon. MICHAEL G. OXLEY,
*Chairman, House Committee on Financial Services, Rayburn House
Office Building, Washington, DC.*

DEAR CONGRESSMAN OXLEY: I am writing to express my support for what you are trying to accomplish in H.R. 1088, the Investor and Capital Markets Fee Relief Act. The Committee on Ways and Means has long taken a jurisdictional interest in the fees collected by the Securities and Exchange Commission. In our view, these "fees" are taxes because they greatly exceed the SEC's regulatory costs. In the past, we worked with the Committees on Commerce and Appropriations to attempt to rectify this problem.

As you know, I am strongly committed to protecting the jurisdictional interest of the Committee on Ways and Means and to ensuring that all revenue measures are properly referred to this Committee. To this end, the Committee on Ways and Means relies upon the statement issued by the Speaker in January 1991 (and reiterated by Speaker Hastert on January 3, 2001) regarding the juris-

diction of the House Committees with respect to fees and revenue measures. Pursuant to that statement, the Committee on Ways and Means generally will not assert jurisdiction over “true” regulatory fees that meet the following requirements:

(i) The fees are assessed and collected solely to cover the costs of specified regulatory activities (not including public information activities and other activities benefitting the public in general);

(ii) The fees are assessed and collected only in such manner as may reasonably be expected to result in an aggregate amount collected during any fiscal year which does not exceed the aggregate amount of the regulatory costs referred to in (i) above;

(iii) The only persons subject to the fees are those who directly avail themselves of, or are directly subject to, the regulatory activities referred to in (i) above; and

(iv) The amounts of the fees (a) are structured such that any person’s liability for such fees is reasonable based on the proportion of the regulatory activities which relate to such person, and (b) are nondiscriminatory between foreign and domestic entities.

Additionally, pursuant to the Speaker’s statement, the mere reauthorization of a preexisting fee that had not historically been considered a tax would not necessarily require a sequential referral to the Committee on Ways and Means. However, if such a preexisting fee were fundamentally changed, it properly should be referred to the Committee on Ways and Means.

We last addressed SEC fees in the National Securities Markets Improvement Act of 1996. That legislation was intended to reform the SEC fee structure and bring the total amount of fees down to the level of the SEC’s budget. In a letter from Chairman Archer to the Chairman of the Commerce Committee, Congressman Bliley (whose committee had jurisdiction over the SEC at the time), Chairman Archer noted the Committee on Ways and Means’ long-standing goal of reducing these “fees” so that they truly are fees rather than taxes. Chairman Archer also reserved jurisdictional interest in the fee structure, and stated that the Committee would strongly oppose any attempts to delay or lengthen the fee phase-down schedule provided by the 1996 Act.

Since the enactment of the 1996 Act, it has become increasingly clear that actual fee collections greatly exceed what was estimated in 1996. In fact, I understand that these fees are projected to generate over \$2.5 billion in revenue in fiscal year 2001, more than six times the SEC budget. H.R. 1088 seeks to address this issue by reducing these fees down to the level of the SEC’s budget, which was also the goal of the 1996 Act.

Because H.R. 1088 would not ensure that fee collections will not exceed the amount required to fund the relevant regulatory activities of the SEC fees, the bill does not meet requirements (i) and (ii) of the Speaker’s statement set forth above. If the fees were being newly created, or were fundamentally different from existing fees, the Committee on Ways and Means would ask that H.R. 1088 be referred to it, in accordance with its jurisdictional prerogative. However, the Committee understands that the intent of H.R. 1088 is to significantly reduce these fees and eliminate fees in excess of the SEC’s budget. Under such circumstances (and without prejudice to the jurisdictional interest of the Committee on Ways and

Means), I will not seek sequential referral of H.R. 1088 or have any objection to its consideration by the House.

However, I would emphasize that, if the fee structure set forth in H.R. 1088 is modified in the future, the Committee on Ways and Means will take all action necessary to protect its proper jurisdictional interest. For example, the Committee will view any modification as falling within its jurisdiction if such modification would result in fee collections in excess of the amount required to fund the relevant regulatory activities of the SEC.

Finally, I would respectfully request that you include a copy of this letter in the report for H.R. 1088 or in the Record during floor consideration of the bill. With best personal regards,

Sincerely,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, April 2, 2001.

Hon. WILLIAM M. THOMAS,

Chairman, House Committee on Ways and Means, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN THOMAS: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1088, the Investor and Capital Markets Fee Relief Act.

I acknowledge your committee's jurisdiction over the revenue aspects of this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Ways and Means with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Yours truly,

MICHAEL G. OXLEY,
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the "Investor and Capital Markets Fee Relief Act."

Section 2. Immediate transaction fee reductions

Section 2 reduces the fee rate in section 31 of the Securities Exchange Act (15 U.S.C. 78ee) applicable to securities transactions on exchanges and in the over-the-counter market and the assessment on security futures transactions on exchanges in fiscal 2002. The section 31 fee rate on securities transactions is reduced by 64 percent in fiscal 2002 (from the current rate of 1/300th of 1 percent, or \$33.33 per million, to \$12 per million of the dollar amount of securities transactions). The section 31 assessment on security fu-

tures transactions also is reduced by 64 percent in fiscal 2002 (from the current \$0.02 to \$0.0072 per round turn transaction).

Section 3. Revision of securities transaction fee provisions; additional fee reductions

Section 3 provides a mechanism for adjusting the section 31 fee rate on securities transactions after fiscal year 2002, and makes an additional reduction to the section 31 assessment on security futures transactions. The section also converts all section 31 fees and assessments to offsetting collections, with no fees credited as general revenue of the Treasury.

This section includes a mechanism to adjust the fee rate on securities transactions each year from fiscal years 2003 through 2011 so that the rate, when applied to an estimate of the total dollar volume of securities transactions for a given year, is reasonably likely to produce collections equal to a target amount for that year. The target amounts for fiscal 2003 through 2011 are fixed at levels that (based on current projections of total dollar volume) will result in a rate of \$12 per million from fiscal years 2003 through 2006 (versus \$33.33 per million under current law), and a rate of \$7 per million from fiscal years 2007 through 2011 (versus \$12.50 per million under current law).

The SEC will determine the estimate of the total dollar volume of securities transactions in a given year, after consultation with the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB), using the methodology that CBO uses to make projections under the Balanced Budget and Emergency Deficit Control Act of 1985. Tying the adjustment mechanism to each year's target amount has the effect of decreasing (or increasing) the section 31 fee rate on a yearly basis depending on the estimated total dollar volume of securities transactions for the year. In other words, any unexpected increase in the projected dollar volume of securities transactions will lead to a reduction in the section 31 fee rate to meet the target amount.

The SEC will perform the task of setting the fee rate each year. The fee rate will be set by order and published in the Federal Register (along with the underlying estimates or projections on which the rate is based) not later than April 30 prior to the start of each fiscal year. The setting of the fee rate will be a ministerial task (determined by dividing that year's estimate of the total dollar volume of securities transactions by that year's statutory target amount), and will not be subject to judicial review. The adjusted rate will go into effect on the later of the first day of the fiscal year or 30 days after a regular appropriation for the SEC has been enacted. The 30-day delay is designed to provide industry with sufficient lead-time to make any necessary system changes for the new section 31 fee rate. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.

There is one "final rate adjustment" to set the section 31 fee rate after fiscal 2011. Specifically, for fiscal 2012, the SEC will adjust the rate so that the rate, when applied to the estimate of the total dollar volume of securities transactions in fiscal 2012, is reasonably likely to produce the target amount for fiscal 2011 (the prior fiscal

year). This adjustment is intended to create additional, permanent fee relief. The final rate adjustment for fiscal 2012 will apply to all subsequent fiscal years.

Section 3 also reduces the assessment on security futures transactions an additional 44 percent in fiscal 2007 (from \$0.0075 under current law to \$0.0042 per round turn transaction).

Finally, the Committee recognizes that the legislation ultimately may require that the Commission receive an up-front appropriation each year that would be reduced by offsetting collections as they are collected. The Commission would need such an up-front appropriation purely for cash-flow reasons; it would not “cost” anything in terms of general revenue.

Section 4. Reduction of registration fees

Section 4 reduces the fee rate under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) that applies when companies register their securities with the SEC. The section also converts all section 6(b) fees on the registration of securities to offsetting collections, with no fees credited as general revenue of the Treasury.

Under the section, the section 6(b) fee rate on the registration of securities is reduced in fiscal 2002 (from \$239 per million to \$125 per million of the maximum offering price at which securities are proposed to be offered). For each of the fiscal years 2003 through 2011, the section 6(b) rate will be adjusted to a rate that, when applied to an estimate of the aggregate maximum offering price at which securities are proposed to be offered during the year, is reasonably likely to produce collections equal to a specified target amount for that year. The target amounts for fiscal 2003 through 2011 are fixed in the bill so that there will be an aggregate reduction in projected section 6(b) fee collections of 28 percent over ten years.

The SEC will determine the estimate of the aggregate maximum offering price at which securities are proposed to be offered during a given year, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology that the Congressional Budget Office uses to make projections under the Balanced Budget and Emergency Deficit Control Act of 1985. Tying the adjustment mechanism to each year’s target amount has the effect of decreasing (or increasing) the section 6(b) fee rate on a yearly basis depending on the estimate of the aggregate maximum offering price at which securities are proposed to be offered during a given year. In other words, any unexpected growth in projected registered offerings will lead to a reduction in the section 6(b) fee rate to meet the target amount.

The SEC will perform the task of setting the fee rate each year. The fee rate will be set by order and published in the Federal Register (along with the underlying estimates or projections on which the rate is based) not later than April 30 prior to the start of each fiscal year. The setting of the fee rate will be a ministerial task (determined by dividing that year’s estimate of the aggregate maximum offering price at which securities are proposed to be offered during the year by that year’s statutory target amount), and will not be subject to judicial review. The adjusted rate will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. The five-day

delay is designed to provide industry with sufficient advance notice of the new section 6(b) fee rate. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.

There is one “final rate adjustment” to set the section 6(b) fee rate after fiscal 2011. Specifically, for fiscal 2012, the SEC will adjust the rate so that the rate, when applied to the estimate of the aggregate maximum offering price at which securities are proposed to be offered during fiscal 2012, is reasonably likely to produce the target offsetting collection amount for fiscal 2011 (the prior fiscal year). This adjustment is intended to create additional, permanent fee relief. The final rate adjustment for fiscal 2012 will apply to all subsequent fiscal years.

Section 5. Fees for stock repurchase statements

Section 5 reduces the fee rate under section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) that applies to stock repurchase statements filed with the SEC in connection with “going-private” transactions. The section also converts all section 13(e) fees to offsetting collections, with no fees credited as general revenue of the Treasury.

In fiscal 2002, the section 13(e) fee rate on the repurchase of securities is reduced from 1/50th of one percent, or \$200 per million, to \$125 per million of the value of securities proposed to be purchased. After fiscal 2002, the fee rate will be adjusted by Commission order to equal the fee rate under section 6(b). The adjusted rate will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. The five-day delay is designed to provide industry with sufficient advance notice of the new section 13(e) fee rate. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rate in effect during the prior fiscal year until the new rate goes into effect.

Section 6. Fees for proxy solicitations and statements in corporate control transactions

Section 6 reduces the fee rates under section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) that apply to proxy solicitations and statements in corporate control transactions filed with the SEC. The section also converts all section 14(g) fees to offsetting collections, with no fees credited as general revenue of the Treasury.

The section 14(g) fee rates are reduced in fiscal 2002 from 1/50th of one percent, or \$200 per million, to \$125 per million of the value of the transaction. After fiscal 2002, the fee rates will be adjusted by Commission order to equal the fee rate under section 6(b). By linking the section 14(g) fee rates and the section 13(e) fee rate addressed under section 5 of the Act (collectively known as “merger and tender offer” fee rates) to the fee rate under section 6(b), the section results in an aggregate reduction in projected merger and tender offer fee collections of 50 percent over ten years.

The adjusted rates will go into effect on the later of the first day of the fiscal year or 5 days after a regular appropriation for the SEC has been enacted. The five-day delay is designed to provide in-

dustry with sufficient advance notice of the new section 13(e) fee rate. If a regular appropriation has not been enacted on the first day of the fiscal year, the SEC will collect fees at the rates in effect during the prior fiscal year until the new rates go into effect.

Section 7. Trust Indenture Act fee

Section 7 eliminates the \$100 filing fee that applies to applications for qualification of certain indentures under section 307(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77ggg(b)). This filing fee raises negligible revenues (\$2,300 during fiscal 2000).

Section 8. Pay parity provisions

Section 8 gives the SEC the ability to match the pay and benefits of Federal banking regulators to address the SEC's current staffing crisis and to reflect the increased coordination of activities among financial service regulators following enactment of the Gramm-Leach-Bliley Act of 1999. The pay parity provisions are based on language that the Office of the Comptroller of the Currency received in the enactment of FIRREA in 1989. Specifically, the Commission is given the authority to fix the total compensation of SEC employees, including pay and benefits.

Under section 8, the guiding standard is comparability of total pay and benefits with those offered by the Federal banking regulators. To further this objective, the bill requires the Commission to consult with and inform the banking regulators regarding SEC pay and benefits, as well as to inform Congress.

Section 8 also makes a technical amendment to remove the SEC from the Senior Executive Service system. This change makes the SEC consistent with Federal banking regulators such as the Office of the Comptroller of the Currency, which was removed from the Senior Executive Service system when it was given pay parity with the Federal Reserve and the FDIC in 1989. Implementing pay parity with the Federal banking regulators would require a net funding increase for the SEC of approximately \$70.9 million in fiscal 2002, with yearly adjustments for inflation thereafter.

Section 9. Study of the effect of fee reductions

Section 9 requires the SEC's Office of Economic Analysis to study the extent to which the benefits of the bill's fee reductions are passed on to investors. The section provides factors that the Office of Economic Analysis must consider in conducting its study, including the elements of the securities industry that benefit from the fee reductions, the impact of fee reductions on different types of investors, and the economic benefits to investors flowing from fee reductions. The section also provides that the Office of Economic Analysis shall treat shareholders of entities subject to the fee reductions as "investors" for purposes of the study. In determining whether the benefits of the Act's fee reductions are passed on to investors, this section does not require the SEC to conduct surveys of the securities industry or investors to the extent the information is otherwise available. Likewise, this section does not require the SEC to develop or test econometric models of investors' transaction demand. The SEC is required to submit a report on the findings from the study required by this section to the Congress within two years of enactment of the bill.

Section 10. Effective dates

Section 10 provides that the section 31 fee and assessment rate reductions for fiscal 2002 are effective as of the later of October 1, 2001 or 30 days after the SEC's regular appropriation for fiscal year 2002 has been enacted. The 30-day delay is designed to provide industry with sufficient lead time to make any necessary system changes for the new section 31 fee and assessment rates. With the exception of the "lapse of appropriation" provisions, the other fee provisions are effective as of October 1, 2001. The "lapse of appropriation" provisions created by this bill in section 6(b)(9) of the Securities Act and sections 13(e)(9), 14(g)(9) and 31(k) of the Exchange Act are effective as of October 1, 2002. The delayed effective date is necessary to make sure that SEC fees are credited as offsetting collections and not general revenue. As a result of this delay, for fiscal 2002, if the Commission's regular appropriation is not enacted by October 1, 2001, the Committee recognizes that any continuing resolution would need to authorize the Commission to continue to collect securities transaction, registration, and merger and tender offer fees to prevent a fee collection stoppage. After fiscal 2002, the "lapse of appropriation" provisions will eliminate the need for fee collection authorization language in any continuing resolutions. The pay parity provisions are effective on the date of enactment, with the exception of the provisions removing the SEC from the Senior Executive Service system. To facilitate the transition to a new compensation system, the SEC is given the authority to eliminate the Senior Executive Service system within twelve months of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

SHORT TITLE

SECTION 1. This Act may be cited as the "Securities Exchange Act of 1934".

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SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) * * *

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(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

[(1) APPOINTMENT AND COMPENSATION.— The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this Act, without regard to

the provisions of other laws applicable to the employment and compensation of officers and employees of the United States, and the Commission may, subject to the civil-service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with the Classification Act of 1923, as amended.

[(2) ECONOMISTS.—

[(A) COMMISSION AUTHORITY.—Notwithstanding the provisions of chapter 51 of title 5, United States Code, the Commission is authorized—

[(i) to establish its own criteria for the selection of such professional economists as the Commission deems necessary to carry out the work of the Commission;

[(ii) to appoint directly such professional economists as the Commission deems qualified; and

[(iii) to fix and adjust the compensation of any professional economist appointed under this paragraph, without regard to the provisions of chapter 54 of title 5, United States Code, or subchapters II, III, or VIII of chapter 53, of title 5, United States Code.

[(B) LIMITATION ON COMPENSATION.—No base compensation fixed for an economist under this paragraph may exceed the pay for Level IV of the Executive Schedule, and no payments to an economist appointed under this paragraph shall exceed the limitation on certain payments in section 5307 of title 5, United States Code.

[(C) OTHER BENEFITS.—All professional economists appointed under this paragraph shall remain within the existing civil service system with respect to employee benefits.]

(1) APPOINTMENT, COMPENSATION, AND BENEFITS.—

(A) *IN GENERAL.*—*The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out its functions under this Act.*

(B) *RATES OF PAY.*—*Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.*

(C) *ADDITIONAL COMPENSATION AND BENEFITS.*—*The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any agency referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.*

(2) *INFORMATION; COMPARABILITY.*—*In establishing and adjusting schedules of compensation and additional benefits for employees of the Commission, which are to be determined solely by the Commission under this subsection, the Commission—*

(A) shall consult with and inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(B) shall inform the Congress of such compensation and benefits; and

(C) shall seek to maintain comparability with such agencies regarding compensation and benefits.

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PERIODICAL AND OTHER REPORTS

SEC. 13. (a) * * *

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(e)(1) * * *

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(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission [a fee of 1/50 of 1 per centum of the value of securities proposed to be purchased] a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

(4) *OFFSETTING COLLECTIONS.*—Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(5) *ANNUAL ADJUSTMENT.*—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

(6) *FINAL RATE ADJUSTMENT.*—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

(7) *PRO RATA APPLICATION.*—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

(8) *REVIEW AND EFFECTIVE DATE.*—An adjusted rate prescribed under paragraph (5) or (6) and published under para-

graph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)—

(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

(i) the first day of fiscal year 2012; or

(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

(9) LAPSE OF APPROPRIATION.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

(10) PUBLICATION.—The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.

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PROXIES

SEC. 14. (a) * * *

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(g)(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940, shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, [a fee of 1/50 of 1 per centum of] a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, [a fee of 1/50 of 1 per centum of] a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

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(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the

person making the filing shall pay to the Commission [a fee of $\frac{1}{50}$ of 1 per centum of] a fee at a rate that, subject to paragraphs (5) and (6), is equal to \$125 per \$1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) *OFFSETTING COLLECTIONS.*—Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, and, except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts. No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(5) *ANNUAL ADJUSTMENT.*—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

(6) *FINAL RATE ADJUSTMENT.*—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates required by paragraphs (1) and (3) for all of such fiscal years to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for all of such fiscal years.

(7) *PRO RATA APPLICATION.*—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

(8) *REVIEW AND EFFECTIVE DATE.*—An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (4) and (9)—

(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

(i) the first day of fiscal year 2012; or

(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

(9) *LAPSE OF APPROPRIATION.*—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offset-

ting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

(10) PUBLICATION.—The rate applicable under this subsection for each fiscal year is published pursuant to section 6(b)(10) of the Securities Act of 1933.

[(4)] (11) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, United States Code, or otherwise.

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SEC. 31. TRANSACTION FEES.

(a) RECOVERY OF COST OF SERVICES.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

(b) EXCHANGE-TRADED SECURITIES.—[Every] Subject to subsection (j), each national securities exchange shall pay to the Commission a fee at a rate equal to [$\frac{1}{300}$ of one percent] \$12 per \$1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, and security futures products) transacted on such national securities exchange[, except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.].

[(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED SECURITIES.—Each national securities association shall pay to the Commission a fee at a rate equal to $\frac{1}{300}$ of one percent of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, other evidences of indebtedness, and security futures products), except that for fiscal year 2007 or any succeeding fiscal year such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.]

[(d) OFF-EXCHANGE TRADES OF LAST-SALE-REPORTED SECURITIES.—

[(1) COVERED TRANSACTIONS.—Each national securities]

(c) OFF-EXCHANGE TRADES OF EXCHANGE REGISTERED AND LAST-SALE-REPORTED SECURITIES.—Subject to subsection (j), each national securities association shall pay to the Commission a fee at a rate equal to [$\frac{1}{300}$ of one percent] \$12 per \$1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, other evidences

of indebtedness, and security futures products) *registered on a national securities exchange or* subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under subsection (c), except that for fiscal year 2007, or any succeeding fiscal year, such rate shall be equal to $\frac{1}{800}$ of one percent of such aggregate dollar amount of sale.

[(2) LIMITATION; DEPOSIT OF FEES.—Except as provided in paragraph (3), no amounts shall be collected pursuant to subsection (d) for any fiscal year, except to the extent provided in advance in appropriations Acts. Fees collected during any such fiscal year pursuant to this subsection shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission.

[(3) LAPSE OF APPROPRIATIONS.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.]

[(e)] (d) ASSESSMENTS ON SECURITY FUTURES TRANSACTIONS.—Each national securities exchange and national securities association shall pay to the Commission an assessment equal to [\$0.02] \$0.0072 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, [except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to \$0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.] *except that for fiscal year 2007 and each succeeding fiscal year such assessment shall be equal to \$0.0042 for each such transaction.*

[(f) DATES FOR PAYMENT OF FEES.—The fees required] (e) DATES FOR PAYMENTS.—*The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid—*

(1) * * *

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[(g)] (f) EXEMPTIONS.—The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

[(h)] (g) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee or assessment rates applicable under this section for each fiscal year *not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based.*

(h) PRO RATA APPLICATION.—*The rates per \$1,000,000 required by this section shall be applied pro rata to amounts and balances equal to less than \$1,000,000.*

(i) DEPOSIT OF FEES.—

(1) *OFFSETTING COLLECTIONS.*—Fees collected pursuant to subsections (b), (c), and (d) for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in subsection (k), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(2) *GENERAL REVENUES PROHIBITED.*—No fees collected pursuant to subsections (b), (c), and (d) for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(j) *RECAPTURE OF PROJECTION WINDFALLS FOR FURTHER RATE REDUCTIONS.*—

(1) *ANNUAL ADJUSTMENT.*—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including assessments collected under subsection (d)) that are equal to the target offsetting collection amount for such fiscal year.

(2) *FINAL RATE ADJUSTMENT.*—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for all of such fiscal years to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this section in fiscal year 2012 (including assessments collected under subsection (d)) equal to the target offsetting collection amount for fiscal year 2011.

(3) *REVIEW AND EFFECTIVE DATE.*—An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. Subject to subsections (i)(1)(B) and (k)—

(A) an adjusted rate prescribed under paragraph (1) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) 30 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

(B) an adjusted rate prescribed under paragraph (2) shall take effect on the later of—

(i) the first day of fiscal year 2012; or

(ii) 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

(k) *LAPSE OF APPROPRIATION.*—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect (as offsetting collections) the fees and assessments under subsections (b), (c), and (d) at the

rate in effect during the preceding fiscal year, until 30 days after the date such a regular appropriation is enacted.

(l) **DEFINITIONS.**—For purposes of this section:

(1) **TARGET OFFSETTING COLLECTION AMOUNT.**—The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

Fiscal year:	Target offsetting collection amount
2002	\$585,720,000
2003	\$679,320,000
2004	\$822,240,000
2005	\$976,320,000
2006	\$1,148,040,000
2007	\$880,880,000
2008	\$892,080,000
2009	\$1,023,120,000
2010	\$1,161,440,000
2011	\$1,321,040,000

(2) **BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.**—The baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, and security futures products) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

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SECTION 6 OF THE SECURITIES ACT OF 1933

REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

SEC. 6. (a) * * *

(b) **REGISTRATION FEE.**—

(1) * * *

[(2) **FEE PAYMENT REQUIRED.**—At the time of filing a registration statement, the applicant shall pay to the Commission a fee that shall be equal to the sum of the amounts (if any) determined under the rates established by paragraphs (3) and (4). The Commission shall publish in the Federal Register notices of the fee rates applicable under this section for each fiscal year.

[(3) **GENERAL REVENUE FEES.**—The rate determined under this paragraph is a rate equal to \$200 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2007 and any succeeding fiscal year such rate is equal to \$67 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered. Fees collected during any fiscal year

pursuant to this paragraph shall be deposited and credited as general revenues of the Treasury.

[(4) OFFSETTING COLLECTION FEES.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate determined under this paragraph is a rate equal to the following amount per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered:

- [(i) \$95 during fiscal year 1998;**
- [(ii) \$78 during fiscal year 1999;**
- [(iii) \$64 during fiscal year 2000;**
- [(iv) \$50 during fiscal year 2001;**
- [(v) \$39 during fiscal year 2002;**
- [(vi) \$28 during fiscal year 2003;**
- [(vii) \$9 during fiscal year 2004;**
- [(viii) \$5 during fiscal year 2005; and**
- [(ix) \$0 during fiscal year 2006 or any succeeding fiscal year.**

[(B) LIMITATION; DEPOSIT.—Except as provided in subparagraph (C), no amounts shall be collected pursuant to this paragraph (4) for any fiscal year except to the extent provided in advance in appropriations Acts. Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as offsetting collections in accordance with appropriations Acts.

[(C) LAPSE OF APPROPRIATIONS.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this paragraph at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

[(5) PRO RATA APPLICATION OF RATES.—The rates required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.]

(2) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to \$125 per \$1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (5) or (6).

(3) OFFSETTING COLLECTIONS.—Fees collected pursuant to this subsection for any fiscal year—

(A) shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission; and

(B) except as provided in paragraph (9), shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

(4) GENERAL REVENUES PROHIBITED.—No fees collected pursuant to this subsection for fiscal year 2002 or any succeeding fiscal year shall be deposited and credited as general revenue of the Treasury.

(5) ANNUAL ADJUSTMENT.—For each of the fiscal years 2003 through 2011, the Commission shall by order adjust the rate re-

quired by paragraph (2) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target offsetting collection amount for such fiscal year.

(6) *FINAL RATE ADJUSTMENT.*—For fiscal year 2012 and all of the succeeding fiscal years, the Commission shall by order adjust the rate required by paragraph (2) for all of such fiscal years to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for fiscal year 2012, is reasonably likely to produce aggregate fee collections under this subsection in fiscal year 2012 equal to the target offsetting collection amount for fiscal year 2011.

(7) *PRO RATA APPLICATION.*—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances equal to less than \$1,000,000.

(8) *REVIEW AND EFFECTIVE DATE.*—An adjusted rate prescribed under paragraph (5) or (6) and published under paragraph (10) shall not be subject to judicial review. Subject to paragraphs (3)(B) and (9)—

(A) an adjusted rate prescribed under paragraph (5) shall take effect on the later of—

(i) the first day of the fiscal year to which such rate applies; or

(ii) 5 days after the date on which a regular appropriation to the Commission for such fiscal year is enacted; and

(B) an adjusted rate prescribed under paragraph (6) shall take effect on the later of—

(i) the first day of fiscal year 2012; or

(ii) 5 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

(9) *LAPSE OF APPROPRIATION.*—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such a regular appropriation is enacted.

(10) *PUBLICATION.*—The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13(e) and 14(g) for each fiscal year not later than April 30 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(11) *DEFINITIONS.*—For purposes of this subsection:

(A) *TARGET OFFSETTING COLLECTION AMOUNT.*—The target offsetting collection amount for each of the fiscal years 2002 through 2011 is determined according to the following table:

Fiscal year:	Target offsetting collection amount
2002	\$512,500,000
2003	\$589,380,000
2004	\$650,385,000
2005	\$790,075,000

2006	\$949,050,000
2007	\$214,200,000
2008	\$233,700,000
2009	\$284,115,000
2010	\$333,840,000
2011	\$394,110,000

(B) BASELINE ESTIMATE OF THE AGGREGATE MAXIMUM OFFERING PRICES.—The baseline estimate of the aggregate maximum offering prices for any fiscal year is the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

* * * * *

SECTION 307 OF THE TRUST INDENTURE ACT OF 1939

QUALIFICATION OF INDENTURES COVERING SECURITIES NOT REQUIRED TO BE REGISTERED

SEC. 307. (a) * * *

(b) The filing with the Commission of an application, or of an amendment to an application, shall be deemed to have taken place upon the receipt thereof by the [Commission, but, in the case of an application, only if it is accompanied or preceded by payment to the Commission of a filing fee in the amount of \$100, such payment to be made in cash or by United States postal money order or certified or bank check, or in such other medium of payment as the Commission may authorize by rule and regulation.] *Commission.*

* * * * *

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

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SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

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§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) * * *

* * * * *

(C) the Federal Election Commission; **[or]**

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Farm Credit Administration, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, and the National Credit Union Administration; *or*
(E) *the Securities and Exchange Commission.*

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Subpart D—Pay and Allowances

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SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

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§ 5373. Limitation on pay fixed by administrative action

(a) Except as provided in subsection (b) and by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the rate for level IV of the Executive Schedule. This section does not impair the authorities provided by—

- (1) sections 248, 481, and 1819 of title 12;
- (2) section 831b of title 16; **[or]**
- (3) sections 403a–403c, 403e–403h, and 403j of title 50**[.]**; *or*
- (4) *section 4(b) of the Securities Exchange Act of 1934.*

* * * * *

DISSENTING VIEWS

While many of us would agree with the supporters of H.R. 1088, the Investor and Capital Markets Fee Relief Act, that ideally we should charge any user fee only at a level designed to cover its intended purposes, we remain seriously concerned at this time about both the substance of this legislation and the priority attached to it in the 107th Congress.

Budget Priorities. Our primary apprehension about H.R. 1088 is a broad policy concern related to budget priorities. In our view, our nation has other budget priorities that it should first address before committing to such a drastic reduction in revenue. H.R. 1088 will reduce federal receipts by approximately \$14 billion between 2002 and 2011. An immediate rush to such a substantial reduction seems precipitous and imprudent, given the current debate in Congress about budget priorities, pending cuts in social programs—many within this Committee’s jurisdiction—and the size of what seems an inevitable tax cut. In passing H.R. 1088, we may effectively spend money that we do not know we have. As the Minority’s views of the Budget Committee’s report on the fiscal 2002 budget resolution point out: “the bottom line is that no economic or budget forecast covering ten years, however conscientious, can be a sound basis for a plan to spend an available budget surplus down to precisely zero.” We risk returning our nation to a pattern of deficit spending if we are not prudent.

Although the House Budget Committee appears to have provided enough latitude in the Budget Resolution, which passed House last week, to accommodate the decrease in securities fees, the Senate has not considered its budget plan at this time and we have not reconciled the differences between the two bodies. Moreover, while those who wish to can certainly arrange things so that we comply with the technicalities of federal budget law, we cannot avoid the more fundamental issue of appropriate budget priorities.

This Committee has responsibility for oversight over federal housing programs and the budget for the Department of Housing and Urban Development. The Bush Administration’s budget blueprint would cut housing significantly, and a number of other areas that should receive priority treatment—education, health care, workplace safety—are being cut or have significant remaining unmet needs. Moreover, the Bush Administration did not even include decreases in securities fees in its budget blueprint. As a result, in this environment we find it difficult to argue that this legislation should be a top priority that deserves to move with such speed. Any debate about SEC fee reductions should occur within the context of a real discussion of budget priorities under a real budget.

Furthermore, as presently crafted H.R. 1088 poses implications for the “pay-as-you-go” requirements established under the Budget

Enforcement Act of 1990. This statute provides that direct spending and revenue legislation enacted for a fiscal year not incur a net cost on a cumulative PAYGO “scorecard.” Unless Congress directs otherwise, a negative balance in the scorecard at the end of the year will trigger a sequester in which largely across-the-board spending cuts are put into effect automatically.

In recently examining S. 143—substantially similar legislation to H.R. 1088 approved by the Senate earlier this month—the Congressional Budget Office noted that because S. 143 would lower governmental receipts, pay-as-you-go procedures would apply. We can expect that the Congressional Budget Office will reach a similar conclusion when evaluating H.R. 1088. Consequently, under PAYGO procedures, these cuts in securities fees could ultimately result in cuts in other important government programs, like Head Start, medical research, and transportation infrastructure improvements, at the end of the year.

Adequate Funding Of Investor Protection. We have other serious concerns about approving this legislation at this time. We are not fully convinced that this bill will provide the full amount of funding actually needed to cover all of the government’s activities related to the nation’s securities markets.

H.R. 1088, if passed in its present form, will provide a substantial reduction in the existing user fees charged by the Securities and Exchange Commission (SEC). The bill attempts to ensure that SEC funding needs are adequately safeguarded. But what neither the bill nor the Committee is addressing is whether current SEC enforcement and oversight efforts are adequate given a continually changing, and potentially troubling, market situation. Moreover, each day the securities marketplace is becoming ever larger and more complex while SEC resources have in recent years remained comparatively very static, as we will further detail below.

In recent months, we have experienced a \$5-trillion loss in the value of publicly traded securities. Certainly, some of that loss results from over-speculation by investors. But much of that loss has other causes. For example, the SEC, as we understand, is currently investigating the accounting practices of a number of companies that may have been partially responsible for this dramatic decline in market capitalization. The SEC has also noted that earnings restatements in the last three years at Cendant, MicroStrategy, McKesson, Columbia-MCA, Oxford Healthcare, Sunbeam, Green Tree, Waste Management, and RiteAid have alone cost approximately \$40 billion in market capitalization. The SEC needs appropriate resources to complete these and other examinations.

We also live in an increasingly interconnected global economy and securities marketplace, in which the United States and the efficacy of its regulatory oversight play a pivotal role. SEC enforcement actions are increasing in number and significance. Investor complaints have increased in recent years. The many special problems posed by Internet transactions have also placed further strains on the agency’s limited resources. To obtain a better sense of the difficulties the SEC faces in addressing this new technology, one need only to refer to a report by the SEC’s Office of Compliance Inspections and Examinations entitled “Examinations of Broker-

Dealers Offering Online Trading: Summary of Findings and Recommendations.”

We have additional concerns about the SEC’s resources at a time of increasing market complexity. We have, for example, experienced enormous increases in the number of companies going public in recent years. Should this trend continue, it would place additional burdens on the agency. Furthermore, millions of Americans who once only had bank savings accounts have now directly or indirectly become participants in the securities markets and income from that participation will help determine the strength of their household incomes, options for their children’s education, their access to health care, and the security of their retirement. In an environment where Americans are becoming a nation of investors rather than a nation of savers, funding for investor protection and the agency responsible for it should take on an increased, not a decreased, priority.

Moreover, the evidence before us at this time unfortunately appears to indicate that our programs designed to protect securities investors may lack the resources needed to function properly. “Many Holes Weaken Safety Net for Victims of Failed Brokerages”—an article that appeared in the New York Times on September 25, 2000—notes that “[a]t a time when millions of United States citizens have taken their money out of federally insured banks and put it into brokerage firms, the Securities Investor Protection Corporation’s charge of protecting the investing public has never been more important. * * * But a close look at this little-understood organization shows that the safety net that investors believe the corporation offers is in fact full of holes.” Furthermore, an article appearing in USA Today on January 9, 2001 entitled “Conned Investors May Never See Refunds, SEC Collection Rate Falls Sharply Since ’94,” indicates that the SEC has fallen badly behind, having collected only 16.9 percent of more than \$1.7 billion in illegal gains that securities fraudsters have been ordered to hand over since 1995. Furthermore, that collection rate fell to an abysmal 4.3 percent in 2000 according to the news report.

The failure to protect legitimate investors from fraudulent broker-dealers, stock swindlers, and other securities scam artists, deserves serious examination both by the SEC and this Committee. In the upcoming months, the General Accounting Office will complete studies on the Securities Investor Protection Corporation as well as the SEC controls over disgorgement cases, and these comprehensive reports will hopefully provide us with more information about the extent of these problems and the reforms needed to address them. Unfortunately, H.R. 1088, by lowering SEC fees now, will limit the resources available to correct these and other problems in the securities industry later.

Moreover, we especially note the findings contained in the SEC’s “Agency Resources and Industry Growth” pamphlet of March 2001. It shows that SEC staff has grown only about 2.5 percent from 1991 to 2000 while the volume on the national exchanges and NASDAQ have increased approximately 34 percent. SEC review staff during the same period has fluctuated between 238 to 271 positions, with 245 full-time employees in 2000. In 1991, there were 180 SEC staff positions for New York Stock Exchange oversight

while the assets of the exchange's member firms stood at \$604 billion. In 2000, New York Stock Exchange member assets stood at \$2,344 trillion while oversight staff had only increased by 95 positions. In 1991, investment advisor assets under management were \$5.4 trillion, and the SEC had 140 inspection staff for those assets. In 2000, there were \$17.5 trillion of investment advisor assets under management, but the SEC inspection staff only stood at 273. These initial comparisons indicate the SEC's resources have not kept pace with the financial markets it is charged with regulating.

In sum, we should not be judging the adequacy of SEC funding by looking at what has been enough in the past. We should instead be examining what is needed in this new world to ensure that the SEC has the necessary ability to adequately monitor what is happening in the securities marketplace and safeguard market stability and investor protection. And we should do that before, not after, we act on this legislation.

Moreover, even if we could agree that H.R. 1088 provides the SEC with the resources required to meet its future needs, we have no assurances that the bill will provide sufficient funding to cover the costs of the government's other securities, regulatory, adjudicatory and oversight activities. In H.R. 1088 we have not accounted for all of the government's securities-related activities, such as Federal Bureau of Investigation inquiries, Justice Department criminal prosecutions, judicial branch resources expended on securities cases, and congressional oversight, among other activities. Because we have not accounted for these activities, the proposed securities fee reductions contained in H.R. 1088 may eliminate too much revenue needed for fully effective enforcement. We should have therefore inserted some consideration of these costs into the fee-setting process designed under H.R. 1088.

During the Committee's consideration of H.R. 1088, we attempted to correct this oversight by offering an amendment that would have required the General Accounting Office (GAO) no later than January 1 of the years 2002 through 2012 to identify the agencies and institutions of the government other than the SEC that are involved in the enforcement, prosecution, and adjudication of matters arising under our securities laws. In its evaluation, the GAO would have estimated the total amount of appropriated funds reasonably likely to be expended in the upcoming fiscal year by such agencies and institutions in conducting such activities. The GAO would have then calculated for any such fiscal year such increases in the target offsetting collection amounts as may be necessary to recover such total amounts, and the SEC would have used these revised targeting amounts as the basis for establishing fee rates each year. Unfortunately, this amendment was not accepted.

Examination Of Other Government Fees. Furthermore, if we are going to cut user fees, we should examine the government fee structure more broadly and consider the significance of the burden they impose, and on whom. The federal government collects an enormous number of user fees and administrative charges, and those collections may well be in excess of need in other areas. For example, there are fees on the recording of intellectual property rights of all kinds, fees related to air traffic, numerous user fees

imposed by the Department of Agriculture for its services, fees on the use of national parks, etc. Surely, we should examine all such user fees and administrative charges before deciding to reduce so substantially only those affecting the securities industry.

Moreover, there are proposals for fee reductions of equal or greater merit before our own Committee that we believe our Committee should first consider. There is, for example, a bipartisan bill pending before the Committee that would reduce the governmental user fees for low- and moderate-income policemen, firemen and teachers who cannot even afford to live in the communities they serve. The Congressional Budget Office estimates that this proposal would actually increase receipts for the government, rather than lose it as H.R. 1088 contemplates, because of the increased number of loans approved by the Federal Housing Administration. But that important bill has not been brought to the Committee's attention. Unfortunately, the user fees paid by low- and moderate-income policemen, firemen and teachers do not appear to be a priority concern.

Lesser Fee Reduction More Prudent. If SEC fees are to be cut despite the aforementioned concerns, the Committee should have pursued a more prudent approach in crafting this legislation. The brokerage firms who are market makers and floor specialists on the national exchanges would receive substantial benefits from H.R. 1088. While these institutions will receive very large breaks under the bill, about 20 percent of the estimated \$14 billion decrease in securities fees over the next ten years, the individual sellers of stock will benefit by only a few dollars each year, if that much. The Ranking Member of the Capital Markets Subcommittee consistently noted during the consideration of this legislation that fees on the sale of stock are just 33 cents per \$10,000 of transactions. In other words, individuals will likely presently spend more to feed a parking meter in front of their broker than they do on these transactions. They consequently will not receive the considerable relief supporters of H.R. 1088 contend they will obtain.

At the end of the last session when this legislation was under discussion in the Commerce Committee, a meritorious compromise was developed by Mr. Towns and Mr. Dingell that would have only cut Section 31 fees—those fees that arguably impact most adversely on consumers. The cost of that fee reduction would be approximately \$4.7 billion over 10 years, as opposed to the \$14 billion cost of the bill before us. If it is the will of the Committee to have fee reductions, then this is an approach to SEC fee reduction that we find more persuasive at this time.

Pay Parity. Finally, in the midst of our debate on the appropriate level of SEC fees, another issue—which is unrelated and of far greater import—has been included in the underlying bill: providing the SEC with the tools necessary to employ and retain competent staff by authorizing pay schedules similar to other federal financial regulators. While Congress has exempted other federal financial regulators like the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, and the National Credit Union Administration from government employee pay schedules, the SEC continues to operate under the provisions of that law. This factor has led to considerable personnel in-

stability at the SEC, which is now faced with handling sophisticated markets and attracting specialized and expensive employees to accomplish its mission. The Commission has been seeking to achieve “pay parity” with other financial regulators for a number of Congresses and the underlying bill provides them this needed support. We strongly support providing pay parity for the SEC and would work hard to gain passage of such provisions in a stand-alone bill.

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